

AMENDED IN ASSEMBLY JUNE 3, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1049**

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**Introduced by Assembly Member Calderon**

February 20, 2003

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An act to amend Section 791.12 of the Insurance Code, relating to underwriting.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1049, as amended, Calderon. Insurance: underwriting: information.

Existing law prohibits an insurance institution or agent from reaching specified adverse underwriting decisions, including denial or cancellation of insurance coverage, based on personal information received from an insurance-support organization whose primary source of information is insurance institutions, except that an insurance institution may reach an adverse underwriting decision based on further personal information obtained as the result of information received from an insurance-support organization.

This bill would, in addition, prohibit an insurance institution or agent from basing an adverse underwriting decision on any indication of a claim appearing on a loss history report received from a loss underwriting database or claim history information exchange program, unless the report indicates that a payment was made to the claimant, if the insurer is informed by the applicant, *upon solicitation by the insurance institution or agent prior to the decision becoming effective*,

that (1) the notice of loss that served as the basis for the indication of a claim was only an inquiry and that the applicant did not intend to file a claim, and (2) there was no damage to the insured property, *nor was there injury or damage that could result in liability*. The bill would also prohibit an insurance institution or agent from basing an adverse underwriting decision on an indication appearing in this type of report that a single claim within the previous 3-year period was closed without payment, ~~and would require the solicitation of an explanation from the applicant, before the decision becomes final, if the decision was based solely on this type of report. The bill would require disclosure to an applicant, before the decision becomes final, if the decision was reached using information from an insurance support organization.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 791.12 of the Insurance Code is  
 2 amended to read:  
 3 791.12. ~~(a)~~ No insurance institution or agent may base an  
 4 adverse underwriting decision in whole or in part:  
 5 ~~(1)~~  
 6 (a) On the fact of a previous adverse underwriting decision or  
 7 on the fact that an individual previously obtained insurance  
 8 coverage through a residual market mechanism; provided,  
 9 however, an insurance institution or agent may base an adverse  
 10 underwriting decision on further information obtained from an  
 11 insurance institution or agent responsible for a previous adverse  
 12 underwriting decision. The further information, when requested,  
 13 shall create a conclusive presumption that the information is  
 14 necessary to perform the requesting insurer's function in  
 15 connection with an insurance transaction involving the individual  
 16 and, when reasonably available, shall be furnished the requesting  
 17 insurer and the individual, if applicable.  
 18 ~~(2)~~  
 19 (b) On personal information received from an  
 20 insurance-support organization whose primary source of  
 21 information is insurance institutions; provided, however, an  
 22 insurance institution or agent may base an adverse underwriting

1 decision on further personal information obtained as the result of  
2 information received from an insurance-support organization.

3 ~~(3)~~

4 ~~(c) On any indication of a claim appearing on a loss history~~  
5 ~~report received from a loss underwriting database or claim history~~  
6 ~~information exchange program, unless the loss history report~~  
7 ~~indicates that a payment was made to the claimant, that a claim was~~  
8 ~~closed without payment~~ *applicant*, if the insurer is informed by the  
9 applicant, *upon solicitation by the insurance institution or agent*  
10 *prior to the adverse decision becoming effective*, that each of the  
11 following is true:

12 (A)

13 (1) The notice of loss that served as the basis for the indication  
14 of a claim was only an inquiry and that the applicant did not intend  
15 to file a claim.

16 ~~(B)~~

17 (2) There was no damage to the insured property, *nor was there*  
18 *injury or damage sustained that could result in liability*, related to  
19 or arising out of the event that was the basis for the inquiry.

20 ~~(4)~~

21 (d) On an indication appearing on a loss history report received  
22 from a loss underwriting database or claim history information  
23 exchange program that a single claim within the previous  
24 three-year period was closed without payment.

25 ~~(b) If an adverse underwriting decision is based solely on an~~  
26 ~~indication of a claim appearing on a loss history report received~~  
27 ~~from a loss underwriting database or claim history information~~  
28 ~~exchange program, the insurance institution or agent shall, before~~  
29 ~~the decision becomes final, affirmatively solicit an explanation~~  
30 ~~from the applicant as to whether the circumstances set forth in~~  
31 ~~subparagraphs (A) and (B) of paragraph (4) of subdivision (a)~~  
32 ~~exist.~~

33 ~~(c) If information from an insurance-support organization was~~  
34 ~~used in reaching an adverse underwriting decision, the insurance~~  
35 ~~institution or agent shall disclose that fact to the applicant before~~  
36 ~~the decision becomes final, and shall provide the applicant with the~~  
37 ~~toll-free telephone number for the applicant to correct any~~  
38 ~~erroneous information.~~

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2	CORRECTIONS
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